CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 10252 OF 2024

[Arising out of AHD-CUSTM-000-APP-466-23-24 dated 29/02/2024 passed by Commissioner of Customs, Central Excise & Service Tax (Appeal)]

SAKAR INDUSTRIES PVT LTD **Appellant**
H/10 New Madhavpura, Market Shahibaug Road,
Ahmedabad, Gujarat-380004

Vs.

COMMISSIONER OF CUSTOMS-CUSTOMS AHMEDABAD **Respondent**
Office of the Pr. Commissioner of Customs, 1st Floor,
Customs House, Opp. Old High Court,
Navrangpura, Ahmedabad, Gujarat-380009

Appearance:
Shri H K Hirani, Consultant for the Appellant
Shri Aakash Singh, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

FINAL ORDER NO. 10353/2026

Date of Hearing : 16.10.2025
Date of Decision : 16.04.2026

Dr. AJAYA KRISHNA VISHVESHA

As per the facts of the case, appellant had filed 343 Bills of Entry for import of aluminum scrap of various grades as per ISRI and Stainless Steel Scrap Zurik. The revenue found declared assessable value in subject Bills of Entry with respect to the corresponding imported goods on lower side as compared to LME price and other contemporaneous value and therefore, queries were raised by the Assessing Officer by asking the appellant to justify the declared value. The appellant agreed to the observation of the Assessing Officer and gave their consent to enhance value of the goods, as per LME prices after due adjustments / discount. The Assessing officer accordingly finalized assessment of B/Es by enhancing assessable value in the respective Bills of Entry and determined the duty payable by the appellant who paid the same and cleared the goods.

1.1 The appellant, feeling aggrieved, filed appeal before the Commissioner (Appeals) Ahmedabad, Customs, who vide Order-in-Appeal dated 30.11.2021, remanded the matter to the Adjudicating Authority to examine the available facts, documents, submissions and issue speaking order under Section 17(5) of the Customs Act, 1962 after following the principles of natural justice and adhering to the legal provisions. In remand proceedings, the Adjudicating Authority vide Order-in-Original dated 07.12.2022 upheld the assessment done by the assessing officer and, re-determined the value of imported goods covered under above Bills of Entry in terms of the Section 14 (1) of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

1.2 Being aggrieved with the above Order-in-Original dated 07.12.2022, appellant filed appeal before the Commissioner (Appeals) who vide impugned order upheld the Order-in-Original and rejected their appeal. Hence, the present appeal before this Tribunal.

2. Learned Counsel for the appellant submitted that the proper Officer has enhanced declared value without any basis and evidence. There is no application of mind by the Adjudicating Authority as well as the Appellate Authority in passing the Orders uploading arbitrary enhancement of declared value. The issue is fully covered by numerous judgments of Hon'ble Apex Court as well as of the Tribunal.

2.1 The learned Counsel for the appellant also submitted that the Assessing Officer had rejected declared transaction value contrary to the provisions of the Customs Act and Customs Valuation Rules (CVR) without assigning any reasons for the same and without providing evidence of contemporaneous value for the purpose of re-determination of value under Rule 12 of CVR 2007. There is no discretion vested with the Adjudicating Authority or the Appellate Authority to reject the transaction value without following the procedure for rejection of declared transaction value under Rule 12 of the Customs Valuation Rules-2007. As per sub-rule (2) of Rule 12, the Proper Officer, at the request of the importer, is bound to intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported and provide a reasonable opportunity of being heard before taking a final decision under sub-rule (1). Appellant was not informed that the declared value was not acceptable to the department and the same has been enhanced arbitrarily. No notice was issued to them under Rule 12 of the CVR 2007 citing the reasons for rejection of declared value. As statutory provisions of Customs Act, 1962 and CVR 2007, have not been followed in their case, enhancement of value automatically becomes invalid.

2.2 The learned Counsel for the appellant also submitted that the Assessing Officer cannot proceed *ex-parte* to reject the declared value and he has to consider the reply to the notice under Rule 12 of CVR 2007 and thereafter, proceed to pass the order. There should be reasonable doubt that the declared value is not true and correct based on the evidence. There is no short cut procedure to reject the declared value on the ground of presumption or any doubt as valid reason is must for rejection of declared value.

2.3 The transaction value as per the provisions of Section 14 (1) of the Customs Act, 1962 is the basis of assessment of duty which provides that the value of imported goods shall be the transaction value of the goods, subject to the conditions mentioned therein. It is a well settled law that unless there is additional consideration involved or any of the exceptions as specified in Rule 3 (2) of the Customs Valuation Rules, 2007 is attracted, the transaction value cannot be rejected. No such allegation or finding is forthcoming in re-assessment proceedings.

2.4 The learned Counsel for the appellant also submitted that re-determination of value by the Proper Officer is in violation of the principles of natural justice. No such order is lawful if passed without providing copies of contemporaneous import and without quoting the Rules of CVR 2007 under which the value has been re-determined. The S.O. number 02/2021 dated 05.07.2021 issued by the Principal Commissioner of Customs is applicable on this issue.

2.5 He also submitted that there are no such provisions under the Customs Act, 1962 or CVR 2007 that the value accepted by the importer shall be the value for the purpose of assessment of duty. The Assessing Officer was adopting illegal procedure for re-determination of value by arbitrarily enhancing the same without considering their letters requesting therein to provide copies of contemporaneous import and the grounds of rejection of declared value. No speaking order was ever issued by the assessing officer. The learned Counsel for the appellant further submitted that the value of aluminum scrap cannot be enhanced on the basis of NIDB data / DGOV circular / LME price etc. He argues that aluminum scrap is not even traded on LME and there is no relation in price of Aluminium scrap and the price of prime aluminum metal. It has been decided in various judgments of Hon’ble Tribunal that the value of goods cannot be enhanced on the basis of LME price / Alter Circular / NIDB data.

2.6 The learned Counsel further submitted that there is no provision of consent in valuation of imported goods for the purpose of assessment of duty. There is no rule, instruction or law that the valuation can be determined on the basis of consent given by the importer. The value is defined under Section 2(41) of the Customs Act, 1962, which is statutory and cannot be altered by the Proper Officer. Revenue obtained their consent by threat that assessment / re-verification will not be done which would have invited demurrage and detention charges due to delay in clearnace. Therefore, in order to save demurrage and detention charges and to avoid delay, importer acceded to the dictate of the Assessing Officer. Further, non-issue of speaking order vitiates enhancement of value and so, any enhancement of value without issue of speaking order automatically becomes null and void. The Appellate Authority cannot pass an order contrary to the provisions of Section 17 (5) of the Customs Act, 1962. He also pleads that CBIC instruction number 7/2018-Cus. is binding on all the Customs Officers and no discretion is vested with any authority with regard to applicability of Section 17(5) of the Customs Act, 1962. While remanding the matter to the Adjudicating Authority, directions of the Commissioner (Appeals), to pass speaking order after following principles of natural justice and the provisions of law, have not been followed by the Original Authority in as much as no contemporaneous import has been cited.

2.7 Relying on Final order no. 51058-51063/2025 of CESTAT Delhi in the case of M/s. Mihir Fragrance Pvt Ltd, Learned Counsel submitted that following principles of law have been laid down:-

(i) FOB value is the transaction value, i.e. the price paid or to be paid for the goods as decided between the exporter and the overseas buyers.

(ii) No stranger to the contract including any Customs Officer has any right to interfere with the FOB value as the Customs Act does not empower any officer to modify the FOB value.

(iii) Even if the transaction value is rejected under the valuation rules and the assessable value is determined following some other method, such determination of assessable value does not change the FOB value.

(iv) The power to notify drawback rate is vested with Central Government and if the rates of drawback are as a percentage of FOB value, drawback should be paid accordingly and no Customs Officer has the power to ignore the FOB value and determine drawback based on any other value determined by him.

(v) The entire investigation and subsequent SCN and the adjudication proceedings were on wrong impression that the Customs Officers have right to modify the FOB value or that drawback, MEIS and ROSL which as per the drawback schedule and the FTP are a percentage of FOB. Relying upon the above case law, learned Counsel prayed for setting aside the impugned order passed by the learned Commissioner (Appeals) and allowing their appeal.

3. The learned AR reiterated the finding in the impugned order passed by the learned Commissioner (Appeals) and submitted that in the instant case, appellant have given their consent and accepted LME price and accordingly, value was enhanced by the Assessing Officer in the light of such acceptance. Therefore, it is clear that when importer / appellant has consented to the enhancement of value, it was not necessary for Revenue to establish valuation of goods as the consented value in effect becomes the declared transaction value requiring no further investigation. Learned Commissioner (Appeals) has relied on the decision in the case of M/s. Hanuman Prasad & Sons reported at (2024) 17 Centax 473 (Tri.-Delhi) wherein it was held that "*When an importer consents to the enhancement of value, it becomes unnecessary for the revenue to establish the valuation as the consented value, in effect, becomes the declared transaction value requiring no further investigation. When an importer accepts the loaded value of the goods without any protest or objection, the importer cannot be permitted to deny its correctness; and the burden of the Department to establish the declared value to be in correct is discharged if the enhanced value is voluntary accepted.*"

3.1 Learned AR argued that this decision has been followed by CESTAT Delhi in the case of Singla Sales Corporation reported at (2024) 22 Centax 316 (Tri.-Delhi) and in case of Century Metal Recycling Pvt Ltd reported at (2024) 23 Centax 30 (Tri.-Delhi), he pleaded that the impugned order may be upheld and the party's appeal may be rejected.

4. We have heard both sides and perused the records. The issue to be decided in the present appeal is "whether the impugned order upholding enhancement of transaction value of the imported goods covered under the relevant Bills of Entry as mentioned therein, is legally sustainable or not in the facts and circumstances of the case?

4.1 Appellant has filed various Bills of Entry for import of Aluminium Scrap and Stainless Steel Scrap "Zurik" declaring certain Assessable value which was doubted by the Assessing Officer as these were on lower side as compared to LME prices and other contemporaneous imports. Appellant was requested to justify the value declared by them. Instead of justifying the declared value, appellant agreed to the observation of the Assessing Officer and consented for enhancing the value of the goods as per LME prices after due adjustments. In view of their consent, Assessing Officer enhanced the assessable value in respective Bills of Entry against which, they filed appeal before the Commissioner (Appeals) who remanded the matter to the Adjudicating Authority with direction to examine available facts, documents, submissions and issue order under Section 17 (5) of the Customs Act, after following the Principles of Natural Justice and adhering to the legal provisions. The Adjudicating Authority vide Order-in-Original dated 07.12.22 re-determined the value of the imported goods covered under the Bills of Entry and thus, upheld the assessment done by the Assessing Officer. Their Appeal against this OIO, filed before the learned Commissioner (Appeals) was also rejected.

4.2 Section 14 (1) of Customs Act, 1962, provides that the value of imported goods shall be the transaction value of such goods i.e. price actually paid or payable for the goods when sold for exports to India for delivery at the time and place of importation. Therefore, it is the duty of the Proper Officer to verify the entries made under Section 46 and for this purpose examine or test the goods as may be necessary. The Proper Officer may require the importer to produce any documents or information whereby the duty leviable can be ascertained. In case the Proper Officer found on examination or testing that the self-assessment is not done correctly, he can re-assess the duty leviable on such goods. The Proper Officer is required to pass speaking order on the re-assessment within 15 days from the date of re-assessment of Bills of Entry. However, the Proper Officer cannot refrain from passing a speaking order by obtaining the consent letter in writing. The proper officer is bound to follow the Customs Valuation Rules, 2007 in case he doubts the declared value. The doubts may be reasonable and cogent and not hypothetical.

4.3 Rule 12 of the Customs valuation (determination of value of imported goods) Rules, 2007 which deals with rejection of declared value, is reproduced below:-

> *"**Rejection of declared value** – (1) when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*
>
> *(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).*
>
> *Explanation. (1) For the removal of doubts, it is hereby declared that:-*
>
> *(i) & (ii)……..*
>
> *(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include*
>
>> *(a) The significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.*
>
> *(emphasis supplied)*

4.4 The provisions relating to 'assessment of duty' under Section 17 of the Customs Act are reproduced below:-

"17. Assessment of duty

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify "[the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:

[PROVIDED that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.)

(3) For [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.)

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter (xxx) and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be."

4.5 We find that learned Commissioner (Appeals) in para 5.8 of the impugned order has observed "*Instead of justifying the declared value, the appellant after going through the contemporaneous data, have expressed their consent accepting the LME prices, which suggests that the declared value by the appellant was not justified. It has nowhere been indicated that coercion was used to obtain the consent. Appellant have paid the duty so assessed* *without any protest which clearly indicates that the consent was given voluntarily without any pressure. It is not open to the appellant now to challenge the assessment after initially accepting the enhanced value by giving consent. In view of the above, I agree with the observations and findings of the Adjudicating Authority and do not find any justification to interfere with the findings in the impugned order passed by the Adjudicating Authority*."

He further observes as under - "*The appellant have further contended that no documentary support for enhancing the value in the form of invoice, Bills of Entry have been provided to them and that, in absence of such documents they were unable to explain the value difference. In this regard, I find that providing the relied upon documents to the appellants would have not served the purpose in as much as they, after going through the contemporaneous data, have voluntarily requested to enhance the declared value. Thus, the contentions raised by appellant are not sustainable*."

4.6 We are of the view that the conclusion arrived at by the learned Commissioner (Appeals) is not sustainable in view of following decisions –

(a) In Commissioner of Customs, Delhi vs. Maruti Fabric Impex reported at 2016 (343) ELT 963 (Tri.-Delhi), it was observed that acceptance of enhanced value by the assesse does not curtail his right to file an appeal against such assessment on enhanced value.

(b) In case of M/s. Sunland Alloys vs. CC Ahmedabad (final order no. A/11030-11080/2022 in Customs Appeal No. 12505/2019) this Tribunal held as follows:-

> *"5. As regard the issue on which the Learned Commissioner (Appeals) rejected the appeal that once the appellant have accepted the enhancement of the value at the time of reassessment of the Bill of Entry they are not falling under the category of aggrieved person in terms of Section 128 (1) of Customs Act, 1962, we find that on this direct issue, the Hon'ble Supreme Court in the case*

of CENTURY METAL RECYCLING PVT. LTD. vs UNION OF INDIA- 2019 (367) E.L.T. 3 (S.C.), considering the fact that the appellant had given the consent letter before the assessing authority, the enhancement of the value was rejected.

6. As per the above Apex Court judgment even though the assessee gave consent letter but if the assessing authority has not followed the principle of valuation as laid down under the Act and Custom Valuation Rules, the assessment will not sustain, therefore, merely because the appellant had given a consent letter, the assessing authority cannot be absolved from not doing the process of reassessment as required under law, therefore, the valuation particularly in the present case only based on DGOV Circular dated 15.11.2018 which has already been dealt with and rejected by this tribunal in the above Order dated 01.10.2019, the enhancement of the value is not legal and proper hence, is rejected.

7. Accordingly, the impugned orders are set aside. Appeals are allowed with consequential reliefs, if any."

(c) The CESTAT Mumbai in the case of Commissioner of Customs Nhava Sheva vs. Nico Extrusions Pvt Ltd reported at 2019 (369) ELT 1153 (Tri.-Mumbai) held that the Assessing Authority had enhanced declared value, without considering the facts such as, huge quantity of same goods imported by the respondent under contract and no contemporaneous import of the higher values were brought on record. While enhancing the value, no speaking order was passed by the authorities. Direction for re-assessing the Bills of Entry by the learned Commissioner (Appeals) is legally sustainable under such circumstances. Setting aside the assessment orders passed on the Bills of Entry is proper and justified.

(d) Hon'ble Supreme Court in the case of Century Metal Recycling Pvt Ltd vs. Union of India reported at 2019 (367) ELT 3 (SC), has clearly held that even though the assesse has given consent letter, the Assessing Officer is bound to follow the relevant rules, regarding the valuation as laid down in the Customs Act and Customs Valuation Rules. If Assessing Authority fails to follow the principles of valuation, the assessment will not sustain. The Assessing

Authority cannot be permitted to say that he has not followed the legal provisions regarding valuation because the importer has given his consent.

(e) In the case of M/s. Albeni Molicular Reserch Hyderabad Centre Pvt Ltd vs. Commissioner of Customs, CESTAT vide final order no. 41280/2024 held that it is well settled law that the transaction value has to be admitted as the assessable value unless proved to be incorrect. For proving the value to be wrong, independent evidence is required and mere reference to NIDB data is not sufficient. It is held by various courts that NIDB data cannot be made the sole basis for enhancement of the value.

4.7 We find that in the first round of litigation, Commissioner (Appeals) vide Order-in-Appeal No. AHD-CUSTM-000-APP-1074-1416-21-22 dated 30.11.2021 had remanded the matter to the Adjudicating Authority to examine the available facts, documents, submissions and issue speaking order under Section 17 (5) of the Customs Act, 1962, after following the principles of natural justice and adhering to the legal provisions. The learned Adjudicating Authority in para 9 of the Order-in-Original dated 07.12.2022, has recorded that "*The importer have advanced plea to the effect that neither evidence of any amount paid over and above the invoice value nor any documents such as invoice or Bills of Entry to support the enhanced value, had been brought on record and as such, the transaction value could not be rejected. In the instant case, the importer have themselves accepted and requested for enhancement of value, as already discussed hereinabove. In such cases, where the importer have expressed their consent to the enhanced value, they have automatically waived off their right of issuance of a speaking order. In such circumstances, the consented value becomes the declared transaction value, as held in the case of M/s. Hanuman Prasad and Sons – (cited supra) and as such, it is improper for the importer to challenge such declared value.*"

4.8 Learned Commissioner has passed the impugned order relying upon the decision in the case of M/s. Hanuman Prasad and Sons (supra) where it was held that when the importers had accepted enhanced value, there was, no necessity for the Assessing Officer to determine the value in the manner provided for in Rule 4 to 9 of the Valuation Rules sequentially. The relevant part of the order has been reproduced below:-

> *"30. The very fact that the importers had agreed for enhancement of the declared value in the letters submitted by them to the assessing authority itself implies that the importers had not accepted the value declared by them in the Bills of Entry. The value declared in the Bills of Entry, therefore, automatically stood rejected. Further, once the importers had accepted the enhanced value, it was really not necessary for the assessing authority to undertake the exercise of determining the value of the declared goods under the provisions of rules 4 to 9 of the Valuation Rules. This is for the reason that it is only when the value of the imported goods cannot be determined under Rule 3(1) for the reason that the declared value has been rejected under sub rule 2, that the value of the imported goods is required to be determined by proceeding sequentially through Rule 4 to 9. As noticed above, the importers had accepted the enhanced value and there was, therefore, no necessity for the assessing officer to determine the value in the manner provided for in Rules 4 to 9 of the Valuation Rules sequentially.*
>
> *35. The following position emerges from the aforesaid decision of the Tribunal.*
>
> *(i) When an importer consents to the enhancement of value, it becomes unnecessary for the revenue to establish the valuation as the consented value, in effect, becomes the declared transaction value requiring no further investigation,*
>
> *(ii) When an importer accepts the loaded value of the goods without any protest or objection, the importer cannot be permitted to deny its correctness. and*
>
> *(iii) The burden of the Department to establish the declared value to be correct is discharged if the enhanced value is voluntarily accepted."*

4.9 We are of the view that the conclusion arrived at by the learned Adjudicating Authority is against the established legal position as held by

Hon'ble Delhi High Court in Niraj Silk Milks vs. CC – 2024 (11) TMI 1361. Hon'ble Court considered the Tribunal's decision in M/s. Hanuman Prasad and Sons case (supra) and thereafter, framed the following question of law:-

> *"Whether the Tribunal misdirected itself in holding that the appellants in the above mentioned matter could not question the enhancement made concerning the valuation of the imported goods, once the appellants had given up their right to seek issuance of a Show Cause Notice or speaking order under Section 17 of the Customs Act, 1962?"*

4.10 Hon'ble Delhi High Court held that proper officer must form and record justiciable reasons in support of a 'reasonable doubt' under Rule 12 before rejecting declared transaction value , and those reasons (when requested) must be communicated to the importer; the Department carries the onus to demonstrate cogent grounds for rejecting the declared value. The Court analysed the statutory scheme (Section 14, Section 17 and the 2007 Rules) and the Supreme Court precedents (including Century Metal Recycling and Eicher Tractors) to conclude that Rule 12 contemplates a two-stage enquiry: (i) raising a reasonable doubt and seeking further information from the importer; (ii) if doubt persists, determining that the transaction value cannot be accepted and proceeding through Rules 4-9. The Court held that the 'reason to doubt' must be reasonable, based on 'certain reasons' (illustrative factors in Rule 12(Explanation)(iii)), and not arbitrary suspicion. Where requested, the proper officer must intimate in writing the grounds for doubting the declared value and give a reasonable opportunity to be heard. The recording and (on request) communication of reasons is necessary to enable meaningful judicial review and to prevent capricious departures from declared values. The Court read Rule 12(2)'s mandate to provide reasons as mandatory and emphasised the Department's burden to produce cogent contemporaneous material before rejecting invoice value. Rejection of declared value requires recording of reasonable, articulable grounds in the file; such grounds must be communicated on request and the Department bears the onus of proof for undervaluation.″

4.11 Hon'ble Court held that where re-assessment done under Section 17 (4) is at variance with the self-assessment of the importer, the proper officer would proceed to pass a speaking order in support of such re-assessment. A combined reading of sub-section (4) and (5) of Section 17 thus leads to irresistible conclusion that a re-assessment, provisional or preliminary would already exist and would have been formulated prior to sub-section (5) getting triggered. It was also held that Rule 12 (2) is essentially concerned with the first limb of re-assessment exercise and is connected with Section 17 (4). This would clearly appeal to reason since the information or documentation that may be elicited from the importer would have to be concerned with the reasonable doubt which the proper officer harbours and thus obliged to communicate to the importer upon request the grounds on the basis of which it doubts the truthfulness or accuracy of the value declared. It is also pertinent to note that sub-section (4) of Section 17 is prefaced by the use of the expression "Where it is found on verification, examination or testing". It is this verification exercise which would necessarily entail an importer being provided a reasonable opportunity to be heard before a final decision is taken. It is perhaps in the aforesaid light that Century Metal Recycling observed that neither opportunity of questioning an opinion with respect to re-assessment as formed nor an opportunity of hearing can be waived. In fact, it held that the aforesaid procedure would clearly be mandatory. Hon'ble Delhi High Court has further held that the assertion of abandonment and waiver of a right is clearly misconceived. The tone and tenor of the communications which were addressed by the appellants cannot possibly be interpreted or construed as amounting to a conscious waiver of right to question the re-assessment further. Not only do those documents appear to be the submissions of a "without prejudice" request tendered in order to facilitate expeditious clearance of goods, the same cannot possibly be viewed or interpreted as amounting to an abandonment of the right to institute an appeal itself.

Hon'ble Court answered the lead question as under. It set aside the Tribunal's order and restored the order of Commissioner (Appeals).

> *"A written acceptance of a reassessment under Section 17(5) does not, as a matter of law, operate as an absolute bar to an importer challenging the correctness of the final assessment; the concession contemplated in Section 17(5) is confined to relieving the proper officer of the obligation to pass a speaking order and does not extinguish the statutory right to question the assessment."*

4.12 In the light of the principles of law laid down by Hon'ble Delhi High Court in Niraj Silk Milks case as mentioned above, the impugned Order-in-Appeal passed by the learned Commissioner (Appeals) cannot be sustained and therefore, it is set aside. The matter is remanded to the Adjudicating Authority to pass fresh order under Section 17 (5) of the Customs Act, 1962 after following the provisions of the Customs Act and principles of natural justice and Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 in the light of the principles of law laid down in Niraj Silk Mills case (supra) by Hon'ble Delhi High Court.

5. The appeal allowed by way of remand.

(Order pronounced in the open Court on 16.04.2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Dharmi